UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,	)	**CASE NOS. 1:10-cr-00190-DAP-11**
	)	**1:16-cv-02651-DAP**
Plaintiff-Respondent,	)	
	)	**JUDGE DAN AARON POLSTER**
vs.	)	
	)	**ORDER**
LAVON RUDERSON,	)	
	)	
Defendant-Petitioner.	)	

I. Background

On or about April 27, 2010, a grand jury indicted Lavon Ruderson on one count of conspiracy and several counts of wire fraud. Indictment, Doc #: 1. On June 8, 2012, after a jury trial, the jury found Ruderson guilty of one count of conspiracy and fifteen counts of wire fraud. Jury Verdict, Doc #: 205.

On October 2, 2012, the Court, in relevant part, imposed a sentence of sixty-three months custody and $1,004,149 restitution. Minutes of Proceeding, Doc #: 258. Judgment was entered on October 15, 2012. J., Doc #: 264. Ruderson's mandatory surrender date was ultimately extended until August 30, 2013. Doc #: 293.

On or about April 1, 2014,[1] Ruderson moved the Court for a 120-day extension of time to file a 28 U.S.C. § 2255 petition. Doc #: 303. On April 30, 2014, the Court denied that motion in a non-document order, noting, "The Court has no authority to grant such an extension."

On October 26, 2016, Ruderson filed the instant Motion Under 28 U.S.C. § 2255 to Vacate Set Aside, or Correct Sentence by a Person in Federal Custody. Doc #: 320 [hereinafter Motion to Vacate].

II. Legal Standard

Under 28 U.S.C. § 2255, a district court may grant relief to a prisoner in custody under a sentence imposed by a federal district court "upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, . . ." *Id.* To prevail on a § 2255 claim, the petitioner must show a fundamental defect in his conviction and/or sentencing "which necessarily results in a complete miscarriage of justice or an egregious error violative of due process." *Nagi v. United States*, 90 F.3d 130, 133–34 (6th Cir. 1996) (quoting *Gall v. United States*, 21 F.3d 107, 109 (6th Cir. 1994)).

Rule 4(b) of the Rules Governing Section 2255 Proceedings requires the judge to whom it is assigned to promptly make a preliminary examination of the petition, records, and transcripts relating to the judgment under attack.

> If it plainly appears from the face of the motion and any annexed exhibits and the prior proceedings in the case that the movant is not entitled to relief in the

[1] This motion to extend time was dated April 1, 2014, but not docketed until April 29, 2014. There is no indication when the motion was mailed.

> district court, the judge shall make an order for its summary dismissal and cause the movant to be notified. Otherwise, the judge shall order the United States Attorney to file an answer or other pleading within the period of time fixed by the court or to take such other action as the judge deems appropriate.

U.S.C. Sec. 2255 Proc. R. 4(b).

III. Discussion

The Court has examined Ruderson's § 2255 petition and reviewed the file of the underlying criminal case, and concludes that summary dismissal is appropriate pursuant to Rule 4(b) of the Rules Governing Section 2255 Proceedings.

As amended by the Antiterrorism and Effective Death Penalty Act, § 2255 requires prisoners to move within one year after the latest of the dates on which (1) the conviction becomes final, (2) the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, (3) the right asserted was initially recognized by the Supreme Court after having been made retroactively applicable to cases on collateral review, or (4) the facts supporting the claim could have been discovered through the exercise of due diligence. § 2255(f).

The instant Motion to Vacate was not filed within one year of the conviction becoming final, pursuant to § 2255(f)(1). For purposes of the § 2255(f)(1) statue of limitations, an unappealed federal criminal judgment becomes final fourteen days after it is entered. *See Sanchez-Castellano v. United States*, 358 F.3d 424, 428 (6th Cir. 2004);[2] Fed. R. App. P. 4(b)(1)(A). Ruderson did not file a direct appeal, so her judgment became final October 29, 2012. Ruderson thus filed her Motion to Vacate a few days shy of four years after her conviction

[2] At the time *Sanchez-Castellano* was decided, Fed. R. App. P. 4(b)(1)(A) afforded ten days; this was later expanded to fourteen days.

became final: well beyond the one year permitted.

Ruderson does not allege, and the Court does not observe, any government action preventing Ruderson's timely filing, pursuant to § 2255(f)(2).

Similarly, while Ruderson does cite U.S.S.G. Amendment 794, which changed Sentencing Guidlines § 3B1.2 ("Mitigating Role" for minimal an minor participants) after she was sentenced, this is not a right "newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review." § 2255(f)(3).

Section 2255(f)(4) is also inapplicable because the Motion to Vacate alleges no new facts supporting her claims that could not have been discovered at the time of trial or the time of sentencing through exercise of due diligence.

Finally, though Ruderson alleges factual innocense (Motion to Vacate 21) she alleges no new exculpatory evidence beyond that available at trial which might permit her to establish actual innocence in post-conviction proceedings.

IV. Conclusion

Having reviewed the records and transcripts relating to the judgment under attack, the Court finds that Ruderson's arguments are untimely. Since it plainly appears from the petition and the prior proceedings in this case that Ruderson is not entitled to relief under 28 U.S.C. § 2255, the Motion to Vacate, Doc #: 320, is summarily dismissed under Rule 4(b).

IT IS SO ORDERED.

/s/ Dan A. Polster Nov. 2, 2016
DAN AARON POLSTER
UNITED STATES DISTRICT JUDGE